

Gilbert D. Sigala, Esq. (State Bar No. 109905)
LAW OFFICES OF GILBERT D. SIGALA
1818 W. Beverly Blvd., Suite 206
Montebello, CA 90640
Phone Number: (323) 726-2150
Facsimile Number: (323) 726-9183

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:)	Chapter 11
CIRCUIT CITY STORES, INC., et al.,)	Case No. 08-35653 (KRH)
)	Jointly administered
Debtors.)	REPLY TO DEBTORS' NINTH
)	OMNIBUS OBJECTION TO CERTAIN
)	(I) LATE CLAIMS AND (II) LATE
)	503(B) (9) CLAIMS; DECLARATIONS
)	OF GILBERT D. SIGALA and
)	ARMIDA ADDESSI

Claimant John Batioff hereby makes the following opposition in response to debtors' ninth omnibus objection to certain (I) late claims and (II) late 503 (B) (9) claims.

1. Claimant John Batioff has a claim for \$275,000.00 based upon injuries sustained on December 18, 2007 in a fall due to dangerous condition that existed in form of a mat covering the threshold of the entrance to the Circuit City Store which caused Mr. Batioff to fall and sustain personal injuries. Attached as **Exhibit "1"** are medical billing which document severe cervical injury to Mr. Batioff requiring recommended surgical intervention as recommended by neurosurgeon Michael Sukoff, M.D. in his report of April 9, 2008.

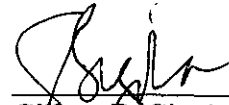
2. As further set forth in the declaration of claimant's counsel, claimant should not be subject to the omnibus objection since claimant's claim was pending and listed in a printout of claims existing before the deadline, since, the adjusters of the claim for Circuit City never notified

1 of 2

1 plaintiffs counsel that deadlines for claims were imminent, since it was not reasonable time and or
2 adequate remedy to allow a late claim if in fact one was necessary, since counsel did not receive
3 notice of the deadline from any representative of Circuit City Stores, Inc. for filing a proof of claim,
4 and since excusable neglect should allow the claim to be considered.

5 Dated: June 26, 2009

LAW OFFICES OF GILBERT D. SIGALA

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8 _____
9 Gilbert D. Sigala, Esq.

DECLARATION OF GILBERT D. SIGALA

I, Gilbert D. Sigala declare as follows:

1. I am an attorney licensed to practice before all Courts of the State of California and Central District of U.S. District Court, and I am the attorney of record for the creditor, John Batioff.

2. Except as otherwise stated, all information set for the in this declaration is based upon personal knowledge and if called upon to testify, I could and would competently testify thereto.

3. This case arises out of the contention that Circuit City Stores located in Fullerton, CA allowed a dangerous condition to exist on its premises in the form of a mat covering the threshold of the entrance to the store which caused Mr. Batioff to fall and sustain personal injuries. Attached as **Exhibit "1"** are medical billings which document severe cervical injury to Mr. Batioff requiring recommended surgical intervention as recommended by neurosurgeon Michael Sukoff, M.D. in his report of April 9, 2008.

4. I submitted a demand package for payment on the personal injury claim to Circuit City adjusters on June 24, 2008 and thereafter had periodic contact with them regarding the claim. At no time was I ever advised by any representative that Circuit City was filing Bankruptcy or that a separate claim or proof of claim needed to be filed.

5. At no time did I ever receive written notification from any attorneys or agents of Circuit City nor did I read in any periodical in the Los Angeles area that a bankruptcy filing had been made by Circuit City and that a claim needed to be file with the bankruptcy court in order for my client's claim for injuries to be considered and/or paid.

6. Having received neither reply nor any written notice from Circuit City or any other source my staff searched the internet in March 2009 and observed that a claim was in fact listed in this Bankruptcy case but did not indicate a liquidated amount. Armida Addressi of my office was directed to and thereafter, contacted Kurtzman, Carson Consultants LLC and was advised that the claim was protected and that we could submit additional documentation to augment the claim and state the liquidated amount. A proof of claim was then mailed on March 31, 2009 setting forth the dollar amount of \$275,000.00.

7. I have additionally submitted a Claim for Administrative Expenses on June 1, 2009.

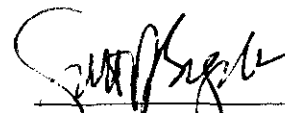
1 8. It is my belief that the claim for Mr. Batioff should be excluded from the omnibus motion
2 since Circuit City was aware and had the claim on file before any purported deadline. It is also my
3 belief that by virtue of these representations Circuit City should be estopped and/or has waived any
4 defenses. It also appears that the number of omnibus objections here is in excess of the number by
5 the Bankruptcy code and/or local rules.

6 9. In the event the court finds there has not been substantial compliance and/or that grounds for
7 estoppel exists, I believe the proof of claim should be considered due to excusable neglect. As stated
8 in paragraphs 4-6 above, Circuit City was put on notice of a pending claim in June 2004 and I in
9 good faith believed I had adequately protected my clients interests through the actions taken as
10 described. It is my belief that the delay in this case was short and since substantial closure in the
11 court administration has not been made in this bankruptcy and there is not been inordinate prejudice
12 suffered by debtor. Also, Mr. Batioff has been represented and relied on counsel throughout these
13 action and should not be penalized by counsel's actions. Finally, the objections of Circuit City
14 should be disallowed since the time period for filling claims was inordinately short, any notices
15 related thereto were not well circulated and I never received any written notices of deadlines from
16 any representative at Circuit City.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Dated: June 16, 2009

LAW OFFICES OF GILBERT D. SIGALA

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21 
22 Gilbert D. Sigala

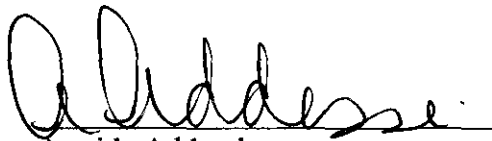
DECLARATION OF ARMIDA ADDESSI

I, Armida Addessi declare as follows:

1. I am an assistant of the Law Offices of Gilbert D. Sigala.
2. Except as otherwise stated, all information set forth in this declaration is based upon personal knowledge and if called upon to testify, I could and would competently testify thereto.
3. On February 20, 2009 I looked up the website for Kurtzman Carson Consultants and found claimant's name John Batioff on the list. I then called and left a message with the Law Offices of Kurtzman Carson Consultants.
4. Then later spoke to an attorney named David. He advised me that Mr. Batioff's claim was already filed in the system and that I should go ahead and file a proof of claim to state the amount as that information was missing.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 26, 2009


Armida Addessi

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EXHIBIT "1"

Michael H. Sukoff, M.D. F.A.C.S.

IME, AME, QME

Diplomate American Board of Neurological Surgery

Clinical address:

1511 W. Holt Blvd., Suite D13
Ontario, CA 91762

PH: 909-635-3435
FX: 909-635-3434

January 2, 2008

Gilbert Sigala
1818 West Beverly Boulevard
Montebello, CA 90640
Tel: 323-726-2150
Fax: 323-726-9183

RE: JOHN BATIOFF
D/I: 12/18/2007
EXAM DATE: 01/02/2008

NEUROSURGICAL CONSULTATION

Mr. John Batioff is a 52-year-old, right hand dominant male who was seen in my Ontario office for an orthopedic neurological examination at the request of Gilbert Sigala.

The patient sustained injuries to his right arm, neck, lower back and hips.

CHIEF COMPLAINT:

The patient complains of pain in his neck.

JOB DESCRIPTION:

At the time of the injury, the patient had been working for approximately eight years.

The patient's job responsibilities included dispatching work to employees, driving at different locations and conducting business at locations.

The physical demand of his job includes mainly standing and walking.

HISTORY OF INJURY, AS RELATED BY THE PATIENT:

Clinical Address:

999 N. Tustin Ave., Suite 13, Santa Ana, CA 92705
11780 Central Ave., Suite 205, Chino, CA 91710
1511 W. Holt Blvd., Suite D13, Ontario, CA 91762
18800 Amar Rd., Ste. D.1, Walnut, CA 91789

RE: JOHN BATIOFF
Date: 01/02/2008
Page: 2 of 4

On 12/18/2007, while walking into a Circuit City store, he was greeted at the entrance door by a store employee and at that time his left foot caught by the floor mat. The patient tripped and fell landing on left knee. The major area of injury was his neck.

The injury was reported but treatment was not rendered. Initial examination was done by Dr. O'Connor three days after the injury. He continued working.

A head-to-toe MRI of him was performed approximately eight to nine years ago at Kaiser. No electrodiagnostic or other diagnostic studies were done.

SUBSEQUENT EMPLOYMENT HISTORY:

The patient is working full-time job.

He is not receiving disability benefits.

PRESENT COMPLAINTS:

The patient complains of pain in his neck, right arm and hips. The pain is present most of the time. The pain travels to right arm. The pain is associated with tingling, numbness and weakness in his arms and hands.

His symptoms are increased with prolonged standing or sitting and reaching, lifting or carrying.

His symptoms are eased with rest and heat.

PAST MEDICAL HISTORY, AS RELATED BY THE PATIENT:

PRIOR INJURIES: In 1988-lower disc and in 1996-lower back.

SUBSEQUENT INJURIES:

AUTO ACCIDENTS: None

FRACTURES: None

ILLNESSES: None

SURGERIES: Laminectomy in 1986.

CURRENT MEDICATIONS: None

MEDICAL ALLERGIES: Penicillin.

FAMILY AND SOCIAL HISTORY:

RE: JOHN BATIOFF

Date: 01/02/2008

Page: 3 of 4

The patient was born on 09/28/1955. His mother is living. His father is deceased. He has two siblings. He has three children. There is a family history of cancer (father) and diabetes (mother and brother).

The patient states that he does not smoke tobacco and he drinks alcohol rarely.

PHYSICAL EXAMINATION:

The patient states that he is 6 feet 1 inches tall and weighs 330 pounds.

NEUROSURGICAL EXAMINATION:

Mr. John Batioff is right-handed and 52 years of age. I examined him in a neurosurgical consultation at my Ontario facility on 01/02/2008.

It was on 12/18/2007 when he was entering a store, greeted by an employee and his left foot was obstructed and caught under a floor-mat. He fell forward landing on his left knee and then left side. His neck was rapidly moved in this fall; Mr. Batioff is a large man weighing 330 pounds and having height of 6 feet 1 inch. Mr. Batioff injured his neck. He has no past history of cervical spine since symptomatology or injury.

The patient does have a past history of a lumbar laminectomy 25 years ago for which he did well until fall at work and a subsequent of left footdrop.

Mr. Batioff states his left knee no longer bothers him and his low back was not aggravated by the fall. His chief complaint that is incapacitating at this time is his cervical pain.

Mr. Batioff's neck pain will radiate towards the right shoulder and the axilla.

He has had no imaging studies or therapy.

Neurosurgical examination reveals an alert and cooperative patient grossly overweight. There are occasional indications of pain.

His gait reveals a total left footdrop.

There is atrophy of the calf and there is decreased pin sensation primarily left L5.

There are absent ankle reflexes. There is a depressed left knee reflex, the right is normal.

There are no pathological reflexes and there is no ankle clonus.

Examination of Mr. Batioff's neck reveals no paravertebral of muscle spasm. There is a mild spinous process tenderness.

RE: JOHN BATIOFF

Date: 01/02/2008

Page: 4 of 4

Range of motion is limited approximately 25% in extension and 10% in flexion. Lateral bending and rotation is limited more on the right than the left with the indication of radicular pain as noted above on right lateral bending.

There is no evidence of muscle weakness or atrophy of the upper extremities.

Pin sensation reveals diminished right C6 appreciation.

The deep tendon reflexes are physiological and symmetrical in the upper extremities but for slightly reduced biceps reflex and periosteal reflex.

DIAGNOSTIC IMPRESSION:

1. Cervical radiculopathy.
2. Status post lumbar laminectomy with severe residual - not related to current incident.

TREATMENT AND DISCUSSION RECOMMENDATIONS:

Mr. Batioff sustained a painful injury to his neck as the result of the December slip-and-fall. There is a clinical evidence of the C6 radiculopathy. In view of the severity of the patient's pain and the positive findings on examination, I believe, it would be unwise not to obtain an MRI at this time. A course of physiotherapy will be initiated and the patient is advised, which he already has really has done, to modify his physical activities.

I shall be re-examining Mr. Batioff in approximately one month. At this time, it is premature to offer a prognosis regarding the degree of recovery and his potential.



MICHAEL H. SUKOFF, M.D.
Board Certified Neurosurgeon

MHS/vm/sp

JOB: 20080102225720

Michael H. Sukoff, M.D. F.A.C.S.

IME, AME, QME

Diplomate American Board of Neurological Surgery

Clinical Address:

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April 9, 2008

Attorney
Gilbert Sigala
1818 West Beverly Boulevard
Montebello, CA 90640
Tel: 323-726-2150
Fax: 323-726-9183

RE: JOHN BATIOFF
DOI: 12/08/2007
EVALUATION DATE: 04/09/2008

NEUROSURGICAL RE-EVALUATION

Mr. John Batioff is 52 years of age and right-handed.

He sustained multi body part injuries, primarily to his neck as a result of a fall on 12/08/2007 while entering a store.

Mr. Batioff developed a cervical syndrome.

PRESENT COMPLAINTS:

On today's date, April 9th, he has shown improvement on therapy. There is persistent neck pain with particularly at-night numbness of his right upper extremity radiating in a C5-C6 fashion.

NEUROSURGICAL EXAMINATION:

Neurosurgical examination reveals an alert and lucid patient. Mr. Batioff has a left footdrop from prior injury and uses a cane.

Clinical Address:

999 N. Tustin Ave., Suite 13, Santa Ana, CA 92705
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18800 Amar Rd., Ste. D-1, Walnut, CA 91789

RE: JOHN BATIOFF
Date: 04/09/2008
Page: 2 of 2

Examination reveals full range of motion of the neck with approximately 15% limitation in extension and otherwise normal.

There is no evidence of hyperreflexia and no pathological signs or ankle clonus.

There is no weakness other than for his left footdrop.

REVIEW OF NEUROIMAGING STUDIES:

Cervical MRI performed in 01/09/2008 reveals significant stenosis at C5-C6 with evidence of cord effacement and on one sagittal study an area of hyper intensity.

These are on the T2 images more suggestive of disc hernia than disc osteophyte complex. There are lesser changes above and below C5-C6.

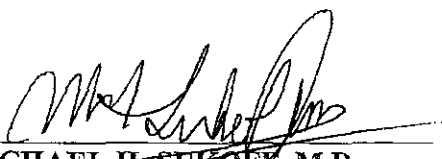
DIAGNOSTIC IMPRESSIONS:

Cervical stenosis - severe.

TREATMENT AND DISCUSSION RECOMMENDATIONS:

Mr. Batioff has responded to non-operative care. His future however is likely progression of the stenosis with significant neural compromise, including spinal cord. Mr. Batioff does not exhibit a myelopathy at this time but he will require re-evaluation by a specialist in neurosurgery at least twice a year with imaging studies. He has a condition that is surgical and indeed is surgical now. If Mr. Batioff had more pain and abnormal findings on exam he likely would opt. to have an operation on his cervical spine.

The patient is in jeopardy, should he get into accident, of having severe spinal cord damage and therefore, he does present with surgical indications now. I have explained this to him and will be available to see him as per his decisions.



MICHAEL H. SUKOFF, M.D.
Neurosurgeon

MHS/vm/sp

JOB: 20080409221452

Michael H. Sukoff, M.D. F.A.C.S.

IME, AME, QME

Diplomate American Board of Neurological Surgery

Clinical address:

1511 W. Holt Blvd., Suite D13
Ontario, CA 91762

PH: 909-635-3435

FX: 909-635-3434

June 4, 2008

Attorney

Gilbert Sigala

1818 West Beverly Boulevard

Montebello, CA 90640

Tel: 323-726-2150

Fax: 323-726-9183

RE: JOHN BATIOFF

D/I: 12/18/2007

EXAM DATE: 06/04/2008

SUPPLEMENTAL REPORT

Mr. John Batioff is 52 years of age and right-handed. A slip-and-fall occurred with the patient landing on his left knee on the 12/08/2007. Mr. Batioff's injury was primarily to his neck.

I have re-reviewed the cervical MRI. There is a significant stenosis at all three levels described, C3-C4, C4-C5 and C5-C6.

The intensity of the disc bulges-herniations, particularly at C5-C6, are suggestive of an acute-subacute injury. The degenerative changes preexisted Mr. Batioff's fall, which not only aggravated them causing a symptoms complex but there is ample evidence that disc protrusion/herniation occurred. This is further substantiated by significant spinal cord effacement and an area of hyper-intensity at C5.

SUMMARY:

Mr. Batioff on 12/08/2007 fell with a cervical injury. This aggravated a preexisting condition and caused evidence of a disc protrusion noted primarily at C4-C5 and C5-C6 with effacement of the

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RE: JOHN BATIOFF

Date: 06/04/2008

Page: 2 of 2

spinal cord. This is concordant with his symptoms complex. The major abnormalities are at C4-C5 and C5-C6 particularly.



MICHAEL H. SUKOFF, M.D.
Board Certified Neurosurgeon

MHS/vm/sp

JOB: 20080604213846

MICHAEL H. SUKOFF, M.D.

STATEMENT OF SERVICES

Gilbert Sigala
1818 W. Beverly Blvd.
Montebello, CA 90640
PH: (323) 726-2150
FX: (323) 726-9183

PATIENT NAME: **BATIOFF, JOHN**
DATE OF INJURY: **12-18-07**

<u>DATE</u>	<u>SERVICES</u>	<u>CPT CODES</u>	<u>CHARGES</u>
01/02/08	NEUROSURGICAL CONSULTATION	99245	\$950.00
04/09/08	NEUROSURGICAL RE-EVALUATION	99215	\$250.00
06/04/08	SUPPLEMENTAL REPORT	99215	\$250.00

TOTAL CHARGED: \$ 1, 450.00

Please notify DR. MICHAEL H. SUKOFF, M.D., for all settlements and to resolve our lien.

Any checks that are issued or will be issued to: **MICHAEL H. SUKOFF, M.D.** for the lien payment of rendered services must be directly mailed to:

MICHAEL H. SUKOFF, M.D.
1511 W. Holt Blvd. #D13,
Ontario, CA. 91762
Tel: (909) 635-3435
Fax: (909) 635-3434
TAX ID#:33-0782044

MICHAEL H. SUKOFF, M.D.

STATEMENT OF SERVICES

Gilbert Sigala
1818 W. Beverly Blvd.
Montebello, CA 90640
PH: (323) 726-2150
FX: (323) 726-9183

PATIENT NAME: BATIOFF, JOHN
DATE OF INJURY: 12-18-07

<u>DATE</u>	<u>SERVICES</u>	<u>CPT CODES</u>	<u>CHARGES</u>
01/02/08	NEUROSURGICAL CONSULTATION	99245	\$950.00
04/09/08	NEUROSURGICAL RE-EVALUATION	99215	\$250.00
06/04/08	SUPPLEMENTAL REPORT	99215	\$250.00

TOTAL CHARGED: \$ 1, 450.00

Please notify DR. MICHAEL H. SUKOFF, M.D., for all settlements and to resolve our lien.

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1511 W. Holt Blvd. #D13,
Ontario, CA. 91762
Tel: (909) 635-3435
Fax: (909) 635-3434
TAX ID#:33-0782044

ADVANCED PROFESSIONAL IMAGING MEDICAL GROUP

SIM C. HOFFMAN, M.D., Medical Director
DIPLOMATE, AMERICAN BOARD OF RADIOLOGY
CERTIFIED SPECIALIST, AMERICAN BOARD OF NUCLEAR MEDICINE

Patient: Batioff, John X-ray #: 210775
Date: 01/09/2008 DOB: 09/28/1955
Physician: Dr. Sukoff

The C6-C7 disc level shows a 3 mm. central disc protrusion present. Disc dessication is present. Spondylosis is present.

The C7-T1 disc level shows no evidence of disc protrusion present. The neural foramina appear patent. There is reversal normal lordosis at the cervical spine present.

IMPRESSION:

1. THE C3-C4 DISC LEVEL SHOWS A 3 TO 4 MM. POSTERIOR DISC PROTRUSION PRESENT. DISC DESSICATION IS PRESENT. STENOSIS IS NOTED IN THE ANTEROPOSTERIOR AND LATERAL RECESS DIAMETER.
2. THE C4-C5 DISC LEVEL SHOWS A 3 MM. POSTERIOR DISC PROTRUSION PRESENT. DISC DESSICATION IS PRESENT. HYPERTROPHIC FACET CHANGES ARE NOTED ANTERIORLY. RELATIVE STENOSIS IS NOTED IN THE ANTEROPOSTERIOR AND LATERAL RECESS DIAMETER.
3. THE C5-C6 DISC LEVEL SHOWS A 2 TO 3 MM. CENTRAL DISC PROTRUSION PRESENT. DISC DESSICATION IS PRESENT. RELATIVE LATERAL RECESS NARROWING IS PRESENT.
4. THE C6-C7 DISC LEVEL SHOWS A 3 MM. CENTRAL DISC PROTRUSION PRESENT. DISC DESSICATION IS PRESENT. SPONDYLOSIS IS PRESENT.

SIM C. HOFFMAN, M.D.
Radiologist

SX/vg /01/10/2008

□

6800 Lincoln Ave., Suite 100 Buena Park, CA 90620	(714) 995-5400	Fax (714) 995-5254
81840 Avenue 46, Suite 103, Indio CA 92201	(760) 863-5432	Fax (760) 863-5492
1930 Wilshire Blvd, Suite 303, Los Angeles, CA 90057	(213) 484-0004	Fax (213) 484-0088
2361-B East Palmdale Blvd, Palmdale, CA 93550	(661) 540-0824	Fax (661) 540-0825
8121 Van Nuys Blvd, Suite 111, Panorama City, CA 91402	(818) 285-4740	Fax (818) 994-4747
165 W. Hospitality Ln, Suite 27, San Bernardino CA 92408	(909) 890-1123	Fax (909) 890-9833
559 N. Central Ave. Upland, CA 91786	(909) 920-1020	Fax (909) 920-3100

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EXHIBIT "2"

Creditor Data

Creditor Name: BATIOFF, JOHN Creditor Notice Name:	Date Claim Filed: KCC Claim #: Amend/Replace? No
Debtor Name: Circuit City Stores West Coast, Inc. Case Number: 08-35654	
Claim Nature: General Unsecured Amount of Claim:	Creditor Info Altered? N
Schedule: F Schedule Amt: \$0.00 <i>This claim has been scheduled as Contingent, Unliquidated and Disputed.</i>	

PROOF OF SERVICE
STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I, Patricia Ricoy, I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within entitled action; my business address is 1818 W. Beverly Blvd., Suite 206, Montebello, California 90640.

On June 26, 2009, I served the foregoing documents described as:

REPLY TO DEBTORS' NINTH OMNIBUS OBJECTION TO CERTAIN (I) LATE CLAIMS AND (II) LATE 503(B) (9) CLAIMS; DECLARATIONS OF GILBERT D. SIGALA AND ARMIDA ADDESSI

on all interested parties in this action.

☐ by personal service ☐ by facsimile ☒ by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Montebello, California, addressed as follows:

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM, LLP
Gregg M. Galardi, Esq.
P.O. Box 636
Wilmington, Delaware 19899-0636

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM, LLP
Chris L. Dickerson, Esq.
333 West Wacker Drive
Chicago, Illinois 60606

Dion W. Hayes
Douglas M. Foley
One James Center
901 E. Cary Street
Richmond, Virginia 23219

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on June 26, 2009, at Montebello, California.


PATRICIA-RICOY

Law Offices Of Gilbert D. Sigala

1818 W. Beverly Blvd., Suite 206
Montebello, CA 90640
(323) 726-2150
Fax (323) 726-9183

June 26, 2009

Clerk of the Bankruptcy Court
United States Bankruptcy Court
701 East Broad Street, Room 4000
Richmond, Virginia 23219

ATTN: CLERK DEPT.

RE: CIRCUITCITY STORES, INC.
Case No.: 08-35659 (KRH)

Dear Sir/Madam:

Enclosed please find the original and one copy of the Reply to Debtor's Ninth Omnibus Objection. Please file the original document and return a conformed copy in the self addressed stamped envelope at your earliest convenience.

Thank you for your time and attention to this matter.

Very truly yours,



Patricia Ricoy

:pr
enclosure